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EXAMINER	
FIELDS, BENJAMIN S	

ART UNIT	PAPER NUMBER
3692	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/054,192	FISHER, CHARLES GORDON	
	Examiner	Art Unit	
	BENJAMIN S. FIELDS	3692	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *29 December 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-38* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-38* is/are rejected.

7)☐ Claim(s) __ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on ___ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *26 June 2008*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Introduction

1. The following is a **FINAL** Office Action in response to the communication received on 29 December 2009. Claims 1-38 are now pending in this application.

Response to Amendments

2. Applicants Amendments to Claims 1-38 has been acknowledged in that: **Claims 1-3, 5-7, 9-24, 31, and 35 have been amended**; **NO Claims have been newly cancelled**; **NO Claims have been newly added**; hence, as such, **Claims 1-38 are pending in this application**.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 1-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cooperstein (US Pat. No. 5,893,071), [hereinafter Cooperstein] in view of Official Notice.

Referring to Claim 1: Cooperstein discloses a system for administering a payout option of an individual annuity contract of a contract owner, wherein said individual annuity contract is a variable annuity contract or a fixed annuity contract (Cooperstein: Column 3, Lines 25-30), said system comprising: a memory including data relating to

said individual annuity contract stored therein, said data including an associated payout option which permits the contract owner of said individual annuity contract to request and withdraw from the annuity during a payout phase of the individual annuity contract (Cooperstein: Figures 7A-7C; Column 3, Lines 30-40); a processor operatively coupled to said memory configured to read the associated payout option, to provide that option to a system user, and to calculate and issue a payout in response to a request from said contract owner for a withdrawal from said annuity (Cooperstein: Figures 1-2); and wherein the system is configured to provide to the user during a payout phase a selectable option with which the user interacts to surrender the annuity to receive a payout for surrendering the annuity contract during the payout phase (Cooperstein: Figure 11//Cooperstein shows in one embodiment of the invention involving an immediate annuity, the payout schedule is defined as beginning within thirteen months of the start date of the life period; and in another embodiment of the invention involving a deferred annuity, the payout schedule a contract holder may withdraw from the annuity contract on a specific date prior to expiration of the life period//).

Furthermore, the Examiner notes that, even if (*the Examiner does not agree*), according to the Applicant, "Cooperstein does not disclose an annuity administration system or process to *structure* an annuity ...", Cooperstein discusses a system and method which could be ***obviously*** structured by one of ordinary skill in the art to implement the teachings as disclosed within the instant application.

At the time of invention it would have been obvious to one of ordinary skill in the art to modify the system and method of Cooperstein for annuity valuation to include

features as shown in the instant application for the purpose of further structuring a unique method and system for the enhancement of critical components within annuity contracts (Cooperstein: Column 2, Line 39-Column 3, Line 39).

Referring to Claim 2: Cooperstein teaches a system and method wherein the option further includes providing the user the ability to withdraw a portion of a present value of the annuity contract during the payout phase (Cooperstein: Figures 7A-7C, 11; Column 10, Line 10-Column 11, Line 40//Cooperstein shows in one embodiment of the invention involving an immediate annuity, the payout schedule is defined as beginning within thirteen months of the start date of the life period; and in another embodiment of the invention involving a deferred annuity, the payout schedule a contract holder may withdraw from the annuity contract on a specific date prior to expiration of the life period//).

Referring to Claim 3: Cooperstein shows system and method wherein the annuity contract has a payout phase specified to a certain age (Cooperstein: Figures 7A-7C, 11; Column 10, Line 10-Column 11, Line 40).

Referring to Claim 4: Cooperstein discusses a system and method with a withdrawal charge that will be calculated and withdrawn from withdrawal payments (Cooperstein: Figure 7, #202; Column 11, Lines 25-40).

Referring to Claims 5-8: Claims 5-8 are the methods for the system of Claims 1-4. As such, Claims 5-8 are rejected under the same basis as are Claims 1-4 as mentioned supra.

Referring to Claim 9: Cooperstein shows a system for administering an annuity contract comprising: a database providing storage to information related to the annuity contract, the information including a payout option and an annuitization date, wherein a computer is configured to determine whether the contract has annuitized based on the annuitization date (Cooperstein: Column 3, Lines 25-30); access the database to determine the payout option (Cooperstein: Figures 7A-7C; Column 3, Lines 30-40); calculates an annuity payment based on the payout option wherein the payout option is an option where payments are made to a predetermined age (Cooperstein: Figures 7A-7C; Column 3, Lines 30-40); determine entry into a payout phase after the annuitization date (Cooperstein: Figures 1-2, 11); after entry into the payment phase, calculate one of a partial withdrawal amount and a surrender amount based on information in the database (Cooperstein: Figures 1-2); and generates an output corresponding to the partial withdrawal amount or the surrender amount (Cooperstein: Figure 1; Column 4, Line 23-Column 5, Line 32; Column 5, Line 47-Column 7, Line 7).

Referring to Claim 10: Cooperstein teaches the limitations of Claim 9.

Cooperstein, however, does not expressly disclose a system wherein the database is further configured to store the number of units that are payable in an annuity payment, the number of units paid being calculated using the equation: Units Paid = (Amount Annuitized) x Annuity Factor Unit Value; and calculate the annuity payment based on the units paid.

The Examiner notes that it is old and well known to one of ordinary skill in the art to utilize equations in order to calculate annuity payments, etc.

At the time of invention it would have been obvious to one of ordinary skill in the art to modify the system and method of Cooperstein for annuity valuation to include features as shown in the instant application for the purpose of further structuring a unique method and system for the enhancement of critical components within annuity contracts (Cooperstein: Column 2, Line 39-Column 3, Line 39).

Referring to Claim 11: Cooperstein discusses the limitations of Claim 9.

Cooperstein, however, does not expressly show a system wherein the computer is configured to calculate the annuity factor using the equation: $1/[((1-vn)/d)]$; where $v = 1/(1 + I0)$, $I0 = AIR$, $d = I0v$, and n = (the predetermined age) - (the age of annuitant on the annuitization date).

The Examiner notes that it is old and well known to one of ordinary skill in the art to utilize equations in order to calculate annuity payments, etc.

At the time of invention it would have been obvious to one of ordinary skill in the art to modify the system and method of Cooperstein for annuity valuation to include features as shown in the instant application for the purpose of further structuring a unique method and system for the enhancement of critical components within annuity contracts (Cooperstein: Column 2, Line 39-Column 3, Line 39).

Referring to Claim 12: Claim 12 parallels the limitations of Claim 9. As such, Claim 12 is rejected under the same basis as is Claim 9 as mentioned supra.

Referring to Claim 13: Cooperstein teaches the limitations of Claim 9.

Cooperstein, however, does not expressly disclose a system wherein the database stores a request for a partial withdrawal of the annuity principal; determine

whether the request meets the conditions for withdrawal; determine whether the contract was annuitized during a surrender charge period; determine a percentage of the annual payments to be withdrawn; and calculate a present value of a percentage of the remaining payments using the equation: Present value = (percentage of annual payments to be withdrawn) x (annual payment) x 1/((1 -vn)/d); where v-- 1/(1 + I0), I0 = AIR, d -- I0v, and n = (predetermined age) - (the age of annuitant on the annuitization date).

The Examiner notes that it is old and well known to one of ordinary skill in the art to utilize equations in order to calculate annuity payments, etc.

At the time of invention it would have been obvious to one of ordinary skill in the art to modify the system and method of Cooperstein for annuity valuation to include features as shown in the instant application for the purpose of further structuring a unique method and system for the enhancement of critical components within annuity contracts (Cooperstein: Column 2, Line 39-Column 3, Line 39).

Referring to Claim 14: Cooperstein shows the limitations of Claim 9.

Cooperstein, however, does not expressly disclose a system wherein the processor provides an amount waived and a percentage (%) withdrawn; and the processor calculates a reduction in the present value using the equation [See Equation].

The Examiner notes that it is old and well known to one of ordinary skill in the art to utilize equations in order to calculate annuity payments, etc.

At the time of invention it would have been obvious to one of ordinary skill in the art to modify the system and method of Cooperstein for annuity valuation to include

features as shown in the instant application for the purpose of further structuring a unique method and system for the enhancement of critical components within annuity contracts (Cooperstein: Column 2, Line 39-Column 3, Line 39).

Referring to Claim 15: Claim 15 serves as an obvious variant of Claim 14. As such, Claim 15 is rejected under the same basis as is Claim 14 as mentioned supra.

Referring to Claim 16: Claim 16 reflects the limitations of Claim 13. As such, Claim 16 is rejected under the same basis as is Claim 13 as mentioned supra.

Referring to Claim 17: Claim 17 parallels the limitations of Claim 14. As such, Claim 17 is rejected under the same basis as is Claim 14 as mentioned supra.

Referring to Claim 18: Claim 18 reflects the limitations of Claim 15. As such, Claim 18 is rejected under the same basis as is Claim 15 as mentioned supra.

Referring to Claim 19: Cooperstein shows the limitations of Claim 9.

Cooperstein, however, does not expressly disclose a system wherein the computer is configured to generate a signal signaling production of a check for one of the partial withdrawal amount and the surrender amount.

The Examiner notes that while Cooperstein may not expressly disclose a system wherein the computer is configured to generate a signal signaling production of a check for one of the partial withdrawal amount and the surrender amount, Cooperstein teaches a "system which finally prepares an appropriate transmittal letter based on the applicable ... and a check ..."

At the time of the invention it would have been obvious to one of ordinary skill in the art to modify the system and method of Cooperstein whereby "system which finally

prepares an appropriate transmittal letter based on the applicable ... and a check ..." could be further implemented to generate a signal signaling production of a check for one of the partial withdrawal/surrender amount for the purposes of calculating an annuity payment.

Referring to Claim 20: Claim 20 parallels the limitations of Claim 9. As such, Claim 20 is rejected under the same basis as is Claim 9 as mentioned supra.

Referring to Claim 21: Cooperstein discusses the limitations of Claim 20.

Cooperstein, however, does not expressly disclose a system wherein the computer is further configured to calculate a reserve amount, wherein the reserve amount is calculated using the equation: Reserve = Payment x 1/((1-vX)/d); where v = 1/(1 + I0), I0 = AIR, d = I0v, and x = number of payments remaining on the contract.

The Examiner notes that it is old and well known to one of ordinary skill in the art to utilize equations in order to calculate annuity payments, etc.

At the time of invention it would have been obvious to one of ordinary skill in the art to modify the system and method of Cooperstein for annuity valuation to include features as shown in the instant application for the purpose of further structuring a unique method and system for the enhancement of critical components within annuity contracts (Cooperstein: Column 2, Line 39-Column 3, Line 39).

Referring to Claim 22: Cooperstein shows the limitations of Claim 22.

Cooperstein, however, does not expressly disclose a system wherein the computer is further configured to discount the reserve at an interest rate equal to the AIR.

The Examiner notes that it is old and well known to one of ordinary skill in the art to utilize equations in order to calculate annuity payment results, etc.

At the time of invention it would have been obvious to one of ordinary skill in the art to modify the system and method of Cooperstein for annuity valuation to include features as shown in the instant application for the purpose of further structuring a unique method and system for the enhancement of critical components within annuity contracts (Cooperstein: Column 2, Line 39-Column 3, Line 39).

Referring to Claim 23: Claim 23 reflects the limitations of Claim 19. As such, Claim 23 is rejected under the same basis as is Claim 19 as mentioned supra.

Referring to Claims 24-38: Claims 24-38 are the methods for the system of Claims 9-23. As such, Claims 24-38 are rejected under the same basis as are Claims 9-23 as mentioned supra.

Response to Arguments

5. The Applicant's arguments filed 29 December 2008 have been fully considered but are found to be **moot** and **non-persuasive**. The Applicant argues:

Argument

I. Response to the Obviousness Rejection

Applicant notes that the Examiner's only basis for rejecting the present application in the current Office Action is under 35 U.S.C. § 103(a). More specifically, claims 1-38 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Cooperstein in view of the Examiner's notice. However, all the features of the claims are not described or

suggested by Cooperstein. For example, with respect to claims 1-38, Cooperstein does not provide an option or the ability to surrender or for surrendering an annuity contract during the payment or payout phase of the annuity contract. The specification in Cooperstein specifically provides features to prevent the annuity contract from being surrendered. This is an example distinguishing point. Each claim stands on its own and may have additional features not described or suggested by Cooperstein. Furthermore, Cooperstein does not describe or suggest a specific association between an annuity contract that has a payout phase to specific age (e.g., 100) and an option to withdraw a portion or surrender the annuity contract during the payout phase. Accordingly, reconsideration and withdrawal of the rejection are requested.

II. Examiner Fails to Establish Prima Facie Obviousness

Moreover, Applicant respectfully traverses the Examiner's obviousness rejection. Applicant first contends that the Examiner did not support a prima facie case of obviousness. With respect to one key distinguishing feature between the present invention and the prior art, Applicant notes that the Examiner merely relies on common knowledge of one of ordinary skill in the art, without providing documentary evidence, as prescribed in MPEP § 2144.03. According to the United States Court of Appeals for the Federal Circuit should be rarely applied and in instances where the facts asserted are "well-known" or are "common knowledge in the art" such that they are "capable of instant and unquestionable demonstration as being well-known" as to "defy dispute." MPEP § 2144.03(A) (citing *In re Ahlert,* 424 F.2d 1088, 1091 (CCPA 1970) and *In re Knapp Monarch Co.,* 296 F.2d 230 (CCPA 1961)). "Furthermore, assertions of technical facts in areas or esoteric technology or specific knowledge of the prior art must always be supported by citation to some reference work recognized as standard in the pertinent art." /d. (citing *In re Ahlert,* at 1091). In the current Office Action, however, the Examiner alleges without a citation or documented basis that "it would have been obvious to one of ordinary skill in the art to modify the system and method Cooperstein for annuity valuation to include features as shown in the instant application." Pursuant to

MPEP § 2144.03(B), the Examiner must provide specific factual findings predicated on sound technical and scientific reasoning to support the conclusion that one of ordinary skill in the art would be so aware of such modification. More specifically, the Examiner suggests that the Cooperstein would be capable of performing the intended use. The Examiner, however, relies on an unfounded inference allegedly supported by Cooperstein. Cooperstein provides no teaching or suggestion of this intended use. Applicant respectfully submits that the Examiner appears to rely on the fact that Cooperstein involves an automated annuities system performed on a computer. Yet, simply because a computer is utilized, it is not necessary that the computer can and would perform the intended use. In accordance with MPEP § 2144.07, Applicant contends that introducing a novel functionality permitting withdrawals *during the payout phase,* cannot be characterized as an intended use of a computer system relating to annuities. The computer would require specific programming for it to be capable of the intended use, but no such programming is disclosed in Cooperstein. In light of Applicant's challenge of the Examiner's reliance on common knowledge to one of ordinary skill in the art, Applicant requests the Examiner to produce documentary evidence in the next Office Action if the rejection is to be maintained. See 37 CFR 1.104(c)(2); *see also, In re Zurko,* 258 F.3d 1379 (Fed. Cir. 2001). In the Action, the Examiner a number of conclusory statements. Applicant clarifies that such statements are not being conceded but are not specifically addressed here in order to expedite the prosecution.

Regarding Argument

The Examiner respectfully disagrees. Cooperstein does indeed provide an option or the ability to surrender or for surrendering an annuity contract during the payment or payout phase of the annuity contract; wherein the system is configured to provide to the user during a payout phase a selectable option with which the user interacts to surrender the annuity to receive a payout for surrendering the annuity

contract during the payout phase (See Cooperstein at least at: Figures 1-2, 7A-7C, 11; Column 3, Lines 30-40//Cooperstein shows in one embodiment of the invention involving an immediate annuity, the payout schedule is defined as beginning within thirteen months of the start date of the life period; and in another embodiment of the invention involving a deferred annuity, the payout schedule a contract holder may withdraw from the annuity contract on a specific date prior to expiration of the life period//).

Furthermore, it is notoriously old and well known in the art that annuity contracts configure provisions which include surrender options which indicate when a contract may be surrendered. These surrender options also specify what fees and penalties apply when the contracts are surrendered. The Examiner notes that the Applicant is thus trying to automate an old and well known process.

Regarding Official Notice: The Applicant's attempt at traversing the Official Notice findings in the previous Office Action's mailing date 26 June 2008 has been inadequate. Adequate traversal is a two step process. First, Applicant must state their traversal on the record. Second and in accordance with 37 C.F.R. §1.111(b) which requires Applicant to ***specifically*** point out the supposed errors in the Office Action, Applicant must state *why* the Official Notice statement(s) are not to be considered common knowledge or well known in the art.

From the Manual of Patent Examining Procedure(MPEP): To adequately traverse such a finding, an applicant must specifically point out the supposed errors in the examiner's action, which would include stating why the noticed fact is not

considered to be common knowledge or well-known in the art [See 37 CFR 1.111(b); See also Chevenard, 139 F.2d at 713, 60 USPQ at 241 ("[I]n the absence of any demand by appellant for the examiner to produce authority for his statement, we will not consider this contention.")]. **A general allegation that the claims define a patentable invention without any reference to the examiner's assertion of official notice would be inadequate**. If applicant *adequately* traverses the examiner's assertion of official notice, the examiner must provide documentary evidence in the next Office action if the rejection is to be maintained [See 37 CFR 1.104(c)(2); See also Zurko, 258 F.3d at 1386, 59 USPQ2d at 1697 ("[T]he Board [or examiner] must point to some concrete evidence in the record in support of these findings" to satisfy the substantial evidence test)]. **If applicant does not traverse the examiner's assertion of official notice or applicant's traverse is not adequate, the examiner should clearly indicate in the next Office action that the common knowledge or well-known in the art statement is taken to be admitted prior art because applicant either failed to traverse the examiner's assertion of official notice or that the traverse was inadequate**. If the traverse was inadequate, the examiner should include an explanation as to why it was inadequate.

The Examiner notes that the steps of the instant application which have been official noticed are considered to be common knowledge or well-known in the art. **At a bare minimum, the applicant should, beyond pointing out that he believes the official noticing to be of error, state why these/this noticed fact(s) is/are not considered to be common knowledge or well-known in the art**. As this has not

been successfully contemplated, **the examiner is clearly indicating in this Office Action that the common knowledge or well-known features in the art that have been Official Noticed in the prior Office Action are hereby taken to be admitted prior art because applicant failed to provide an adequate traversal of such material**. See MPEP §2144.03.

As such, the Examiner maintains the rejection.

6. Any additional arguments filed 29 December 2008 have been fully considered but have been found to be **moot** and **non-persuasive**. As the remaining claims depend directly or indirectly from the independent claims mentioned/discusses above, the Examiner maintains all previously asserted rejections.

Examiner Note

7. **The Examiner has pointed out particular reference(s) contained in the prior art of** record within the body of this action for convenience of the Applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply. **Applicant**, in preparing the response, should **fully consider the entire reference** as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the Examiner.

Conclusion

8. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication should be directed to BENJAMIN S. FIELDS at telephone number 571.272.9734. The examiner can normally be reached MONDAY THRU FRI between the hours of 9AM and 7PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, KAMBIZ ABDI can be reached at 571.272.6702. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should

you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Benjamin S. Fields
6 March 2009

/Harish T Dass/
Primary Examiner, Art Unit 3692